

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF

Docket No. CWA-07-2003-0301

Whittaker Builders, Inc.
Stone Meadows
Wentzville, Missouri

CONSENT AGREEMENT AND
FINAL ORDER

Respondent

Proceedings under Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

I. PRELIMINARY STATEMENT

These proceedings were initiated pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (hereafter "CWA"), 33 U.S.C. § 1319(g). On September 16, 2003, the United States Environmental Protection Agency (EPA or Complainant), Region VII issued a Complaint, Notice of Proposed Penalty and Notice of Opportunity for Hearing (Complaint) to Whittaker Builders, Inc. (Respondent). The Complaint alleged a violation of the CWA by Respondent at its Stone Meadows construction site in Wentzville, Missouri.

The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CAFO) is the result of such negotiations and resolves all issues relating to the administrative claims arising from the allegations in the Complaint.

II. CONSENT AGREEMENT

1. For purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and the Final Order set forth below.

2. Respondent neither admits nor denies the factual allegations set forth in the Complaint.

3. Respondent agrees not to contest the terms and conditions set forth in this CAFO in this or subsequent proceedings to enforce the terms of this CAFO, and agrees not to appeal the Final Order set forth below.
4. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth in the Complaint.
5. EPA has considered the appropriateness of the penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and has determined that the appropriate penalty for settlement of the violations set forth in the Complaint is Twelve Thousand Dollars (\$12,000). Payment of this penalty shall satisfy all claims arising out of the facts alleged in the Complaint.
6. Respondent consents to the issuance of the Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.
7. Respondent and EPA each agree to bear their own costs and attorneys' fees.
8. Each signatory of this CAFO certifies he or she is fully authorized to enter into the terms of the CAFO.
9. Respondent certifies by the signing of this CAFO that it is in compliance with the requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

III. FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Twelve Thousand Dollars (\$12,000) within thirty (30) days of receipt of a copy of this fully executed CAFO. Payment shall be by cashier's or certified check, made payable to "Treasurer, United States of America," and referencing EPA Docket No. CWA-07-2003-0301, and remitted to:

EPA - Region VII
Attn.: Regional Hearing Clerk
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

A copy of the check shall be mailed to:

Jenna Wischmeyer
Assistant Regional Counsel
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

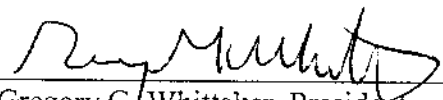
2. Respondent's failure to pay the civil penalty assessed herein in accordance with the provisions of this Order may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon at the applicable statutory rate.

3. Compliance with the terms of this CAFO satisfies all claims arising out of the facts alleged in the Complaint. This CAFO shall terminate after satisfaction by Respondent of the requirements of this Final Order.

4. This executed CAFO shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

For the Respondent:

WHITTAKER BUILDERS, INC.




Gregory G. Whittaker, President

12-31-03

Date

For the Complainant:

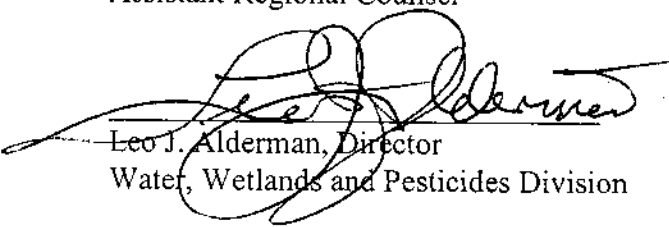
The United States Environmental Protection Agency



Jenna Wischmeyer
Assistant Regional Counsel

1/22/2004

Date



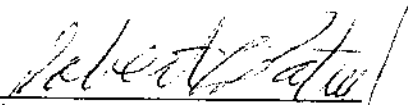
Leo J. Alderman, Director
Water, Wetlands and Pesticides Division


1/23/04

Date

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IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.


Robert L. Patrick
Regional Judicial Officer


Date

IN THE MATTER OF Whittaker Builders, Inc., Respondent
Docket No. CWA-07-2003-0301

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

J. Daniel Breedlove
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Brad Goss, Esq.
Law Office of Brad Goss
21 Maryhill Drive
St. Louis, Missouri 63124

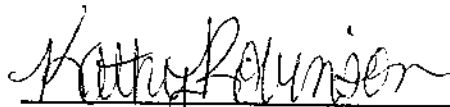
Copy by Facsimile and
First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

and

The Honorable William B. Moran
Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

Dated: 2/2/04


Kathy Robinson
Regional Hearing Clerk